

CAPITAL DEFENSE COUNSEL

A Division of the Office of State Public Defender



André de Gruy
Capital Defender

MONTHLY ACTIVITIES REPORT

November 2015

The following report of monthly activities of the Capital Defense Counsel Division of the State Public Defender is submitted in accordance with Miss. Code § 99-18-15. Attached to this Report is a docket of potential death penalty eligible cases in the circuit courts and rosters of all death penalty cases. Also attached is a spreadsheet showing statewide trial level caseload for FY 06-14.

Purpose

Capital Defense was established by the state legislature to assist in trial and direct appeal of death eligible and death penalty cases in the state courts of Mississippi.

Mission

Capital Defense strives to provide high quality legal representation to indigent clients consistent with the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.

Caseload

Capital Defense is currently staffed to handle a mix of 10-15 new trial level cases per year and/or 3 new appeals per year. This assumes local counsel will be appointed. Capital Defense is currently representing 18 clients at the trial level. Capital Defense has one client who has been sentenced but remains open pending testimony. One client was convicted, sentenced to life and conviction reversed. The prosecution is not seeking death at retrial but because of a lack of local counsel Capital Defense is preparing to retry the case. Capital Defense is representing eight clients at the appeal level including four on Writ of Certiorari. These eight people are all of the direct appeal cases in Mississippi.

Across the state, there are 81 people with potential death eligible charges pending in circuit court. Fourteen are represented by retained counsel. Four of these attorneys are seeking to have their clients found indigent in order to seek public resources consistent with *Levester Brown v. State*. One person has had his death sentence reversed in post-conviction and is still represented by post-conviction pro bono counsel who may seek appointment. Counsel status is unknown in four cases. Sixty-two are represented by appointed counsel.

Of the 62 people with appointed counsel, 17 are represented by Capital Defense and six are represented by contract private counsel through the State Defender due to conflicts of interest with Capital Defense. It is believed that the prosecution is not pursuing the death penalty in most of the remaining cases but they remain on the docket until this is confirmed. However, it is believed that at least one of these cases is facing the death penalty. The local public defender has chosen to represent the client without State Defender direct assistance.

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Activities

The office continues to provide technical assistance to attorneys handling cases for juvenile offenders facing life without parole sentences (JLWOP) through the JLWOP Resource Counsel project funded through a private grant. As an addendum to this report we are attaching an overview of the effect of JLWOP on indigent defense. We are also working on HB 585 implementation and assisting with the development of a mental health cases resource project. At the current time the agency has 8 fulltime employees, down from 11 at the time of the creation of the OSPD (2011). We do not intend to fill the open attorney, investigator or mitigation specialist position due to budget concerns and declining caseloads. This may result in slight short-term delays but is a necessary administrative action. If caseloads demand, this decision will be revisited and a deficit appropriation sought in January.

OPEN DOCKET
December 1, 2015

District	County	Defendant		Counsel
1	Lee	Bishop	Leah	Appointed
1	Pontotoc	Hughes	Carl	Appointed
2	Harrison	Ambrose	Stevie	Appointed
2	Harrison	Garcia	Alberto	Appointed
3	Lafayette	Boone	Derick	Appointed
3	Lafayette	Lyons	Joseph	Appointed
3	Lafayette	Wilbanks	Steven	Appointed
3	Marshall	Crebshaw	Jeremiah	Appointed
3	Marshall	Euell	Monica	Appointed
4	Leflore	Berry	Dantrell	Appointed
4	Leflore	Meeks	Ben III	Appointed
4	Sunflower	Lewis	Roderick	Appointed
4	Sunflower	Triplett	Beuncle	Appointed
4	Sunflower	Wallace	Kerry	Appointed
4	Sunflower	Wallace	LaMarcus	Appointed
4	Sunflower	Wallace	Patrick	Appointed
7	Hinds	Harris	Detrich	Appointed
7	Hinds	Johnson	Jordan	Appointed
7	Hinds	Johnson	Jordan	Appointed
7	Hinds	Johnson	Quenten	Appointed
7	Hinds	Kees	Jerry	Appointed
7	Hinds	Menifield	Tiffany	Appointed
7	Hinds	Morrison	Octavious	Appointed
7	Hinds	Rodgers	Michael	Appointed
7	Hinds	Rodgers	Patrick	Appointed
7	Hinds	Shepard	Donte	Appointed
7	Hinds	Smith	Gregory	Appointed
7	Hinds	Stewart	Alonzo	Appointed
7	Hinds	Thompson	Dewayne	Appointed
10	Lauderdale	Houston	JaQuis	Appointed
10	Lauderdale	McCallum	Juwan	Appointed
10	Lauderdale	Seals	Derrick	Appointed
10	Lauderdale	Steele	Marcus II	Appointed
11	Bolivar	Johnson	Jayvious	Appointed
11	Coahoma	Collins	Cedric	Appointed
12	Forrest	Gillett	Roger	Appointed
13	Simpson	Keys	Kendrayla	Appointed
15	Jeff Davis	Johnson	Shanice	Appointed
15	Jeff Davis	Love	Malcolm	Appointed
15	Jeff Davis	Spivey	Joseph	Appointed
15	Lamar	Taylor	Timothy	Appointed
15	Lawrence	Peyton	Kegerran	Appointed

OPEN DOCKET
December 1, 2015

District	County	Defendant		Counsel
15	Lawrence	Watts	Darion	Appointed
16	Clay	Mullins	Charles	Appointed
16	Clay	Robinson	Avis	Appointed
16	Lowndes	Bankhead	Derrick	Appointed
16	Lowndes	Beard	Omar	Appointed
16	Lowndes	Chambers	Patrick	Appointed
16	Lowndes	Merriweather	Cameron	Appointed
16	Lowndes	Ross	Michael	Appointed
16	Lowndes	Taylor	Joshua	Appointed
16	Lowndes	Williams	Cortez	Appointed
16	Noxubee	Reed	Elizabeth	Appointed
16	Noxubee	Shumaker	Jonathan	Appointed
16	Noxubee	Williams	Justin	Appointed
19	Greene	McCarty	Welford	Appointed
19	Jackson	Street	Scotty	Appointed
20	Madison	Archie	Joshua	Appointed
20	Madison	Clark	Teaonta	Appointed
20	Madison	Clark	Tony	Appointed
20	Rankin	Stanford	Zachary	Appointed
22	Copiah	Hollie	Erik	Appointed
16	Lowndes	Hodges	Quintez	Pro Bono
1	Itawamba	Kelly	Demarco	Q
1	Itawamba	McClenton	Kyra	Q
1	Itawamba	Metcalf	Tyjuan	Q
1	Itawamba	Thomas	Tyandre	Q
1	Itawamba	Johnson	Tonisha	Retained
2	Hancock	Lewis	Orin	Retained
2	Harrison	Williams	Jalen	Retained
7	Hinds	Beasley	Javondus	Retained
7	Hinds	Clements	Dymond	Retained
7	Hinds	Perkins	Lucious Jr.	Retained
11	Bolivar	Hodges	Jamario	Retained
11	Bolivar	Vaughn	Fabian	Retained
13	Simpson	Varnado	Cutrell	Retained
14	Lincoln	Brown	Jamaal	Retained
16	Oktibbeha	Brooks	Charleka	Retained
16	Oktibbeha	Brown	Milton	Retained
16	Oktibbeha	Mason	Phillip	Retained
19	George	Harper	Nicholas	Retained

DIRECT APPEAL ROSTER

	Last Name	First Name	County
Certioari	Cox	David	Union
	Dickerson	David	Copiah
	Flowers	Curtis	Montgomery
	Ronk	Timothy	Harrison
Rehearing			
Argued			
Briefed			
Appellee Brief Due	Evans	Timothy	Hancock
	Hutto	James III	Hinds
Appellant Brief Due	Blakeney	Justin	Jones
Record Pending	Ambrose	Abdur	Harrison
Motion for New Trial			

State Post-Conviction Roster

Rehearing

Appeal from Circuit Court

Carr	Anthony	Quitman
Russell	Willie	Sunflower
Scott	Kevin	Bolivar

Remand to Circuit Court

Brown	Sherwood	DeSoto	successor
Bennett	Devin	Rankin	
Conner	Ronnie	Lauderdale	successor
Havard	Jeffrey	Adams	successor
Howard	Eddie	Lowndes	successor
Manning	Willie	Oktibbeha	successor
Pitchford	Terry	Grenada	
Smith	Clyde	Leflore	
Walker	Alan	Harrison	successor
Wilson	William	Lee	

Motion Filed

Batiste	Bobby	Oktibbeha	
Corrothers	Caleb	Lafayette	
Crawford	Charles	Tippah	successor
Galloway	Leslie III	Harrison	
Goff	Joseph	George	
Howell	Marlon	Union	successor
Jordan	Kelvin	Clarke	successor
Keller	Jason	Harrison	
Knox	Steve	Amite	successor
Le	Thong	Jackson	successor
Walker	Derrick	Lee	

Motion Due

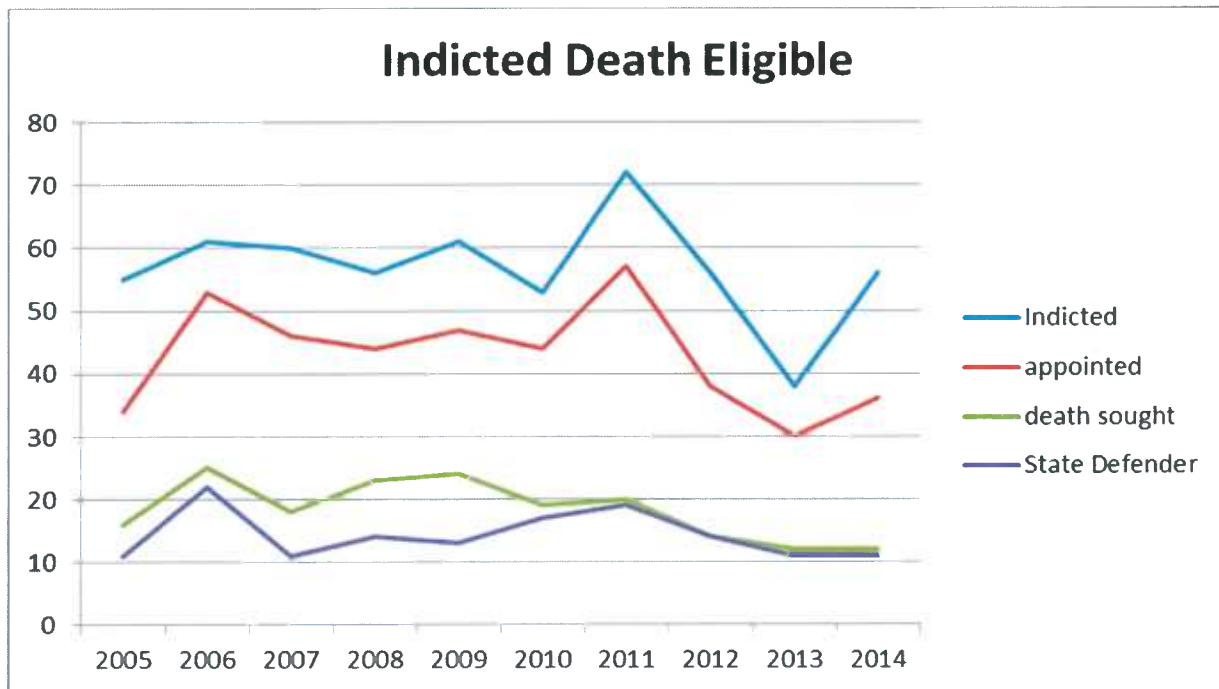
Brown	Joseph	Adams	successor
Cox	David	Union	
Dickerson	David	Copiah	
Flowers	Curtis	Montgomery	
Ronk	Timothy	Harrison	
Underwood	Justin	Madison	successor

Federal Court Roster

COURT	Last Name	First Name	County	Docket #	
Supreme Court					
Fifth Circuit Court of Appeals	Chamberlin	Lisa Jo	Forrest	15-70012	
	Simon	Robert	Quitman	15-70002	
Northern District of Mississippi					
	Brown	Sherwood	DeSoto	3:01-cv-00197-SA	STAYED
	Howard	Eddie	Lowndes	3:07-cv-00010-WAP	STAYED
	Howell	Marlon	Union	5:15-cv-105-DMB	
Southern District of Mississippi					
	Billiot	James	Hancock	1:86-cv-00549-TSL	STAYED
	Brown	Joseph	Adams	5:12-cv-00091	STAYED
	Brown	Xavier	Lamar	2:07-cv-00049-HTW	
	Chase	Ricky	Copiah	3:2015-cv-00799	
	Grayson	Blayde	George	1:04-cv-00708-DPJ	
	Havard	Jeffrey	Adams	5:08-cv-00275-KS	STAYED
	Jordan	Kelvin	Clarke	2:13-cv-301	STAYED
	Knox	Steve	Amite	5:13-cv-241	STAYED
	Le	Thong	Jackson	1:07-cv-01128-LG	STAYED
	Moffett	Eric	Hinds	3:14-cv-639-CWR	
	Powers	Stephen	Forrest	2:07-cv-00020-HTW	
	Thorson	Roger	Harrison	1:12-cv-00067-DPJ	
	Underwood	Justin	Madison	3:06-cv-00273-DPJ	STAYED
	Walker	Alan	Harrison	1:97-cv-00029-KS	STAYED

Trial level capital murder cases opened statewide by fiscal year; tracked by date of arrest

	people charged	juveniles	dismissed/ reduced	retained	appointed possible death eligible	conflicts	death sought	conflicts	potential CDC staff cases	actual CDC Staff cases	actual State Contract
FY 2005	74	10	9	21	34	9	16	3	13	11	0
FY 2006	91	5	25	8	53	11	25	2	23	21	1
FY 2007	92	10	22	14	46	12	18	3	15	11	0
FY 2008	83	8	19	12	44	16	23	7	16	14	0
FY 2009	86	10	15	14	47	15	24	5	19	13	0
FY 2010	74	2	19	9	44	12	19	4	15	13	4
FY 2011	96	6	18	15	57	18	20	4	16	16	3
FY 2012	79	8	15	18	38	12	14	2	12	12	2
FY 2013	70	10	22	8	30	10	12	2	10	9	2
FY 2014	81	6	19	20	36	11	12	3	9	8	3
5-year average	80.00	6.40	18.60	14.00	41.00	12.60	15.40	3.00	12.40	11.60	2.80



Juvenile Life without Parole (JLWOP) – the effect of Miller v. Alabama on the delivery of indigent defense services in Mississippi. (December 2015)

Background

In 2005 the Supreme Court of the United States held that sentencing a person to death for a crime that occurred prior to their 18th birthday violated the federal constitution. Roper v. Simmons, 543 U.S. 551 (2005). In 2010 the Court held sentencing juvenile offenders to life without parole (JLWOP) for non-homicide offenses violated the federal constitution. Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2111 (2010).

In June 2012 the Court held that automatic life without parole sentences for juvenile offenders convicted of homicide offenses violated the federal constitution. Miller v. Alabama, 132 S.Ct. 2455 (2012).

In June 2013 the Mississippi Supreme Court recognized that under Mississippi's parole law enacted in 1994 and 1995, all life sentences are without parole. Parker v. State, 119 So.3d 987 (Miss. 2013). Thus the Parker Court held that Miller requires individual determinations of parole eligibility in all capital murder and murder cases before a life sentence without parole can be imposed. Parker applies to all juvenile offenders serving a life sentence at the time Miller was decided as well as all juvenile offenders convicted since. Jones v. State, 122 So3d 698 (Miss. 2013).

In light of these decisions every juvenile homicide offender is now entitled to a sentencing or resentencing hearing and entitled to counsel for that hearing. See Perryman v. State, 120 So.3d 1048 (Miss. Ct. App. 2013). Because life without parole is the equivalent of a death sentence when imposed on a juvenile offender, see Miller, equivalent procedures must be in place to ensure the defendant's constitutional rights are protected. Dycus v. State, No. 2012-M-02041-SCT (Order vacating sentence and remanding for new sentencing hearing before a jury pursuant to Miss. Code § 99-19-101) (Sept. 17, 2014).

This will require mitigation investigation and presentation including the use of experts, particularly in the field of child development. See Davis v. State, 87 So.3d 465 (Miss. 2012) (death sentence vacated where counsel failed to investigate and present mitigation).

Because these juvenile homicide cases are not "death penalty eligible offenses" Capital Defense Counsel cannot provide direct representation. Miss. Code § 99-18-5. However, under the State Defender's authority to utilize employees of one division in another division, Capital Defense has assisted the Public Defender Training Division in providing training and technical assistance to public defenders and volunteer counsel handling JLWOP cases. This limited assistance benefits the local defenders and counties but falls far short of ensuring they can meet the new constitutional mandate. This development increases the need for comprehensive indigent defense reform in Mississippi.

Scope of the Problem

Eighty-six people¹ in Mississippi were sentenced to automatic life without parole sentences for crimes occurring when they were juveniles (JLWOP sentences). Four were on direct appeal when Miller was decided and 82 have since filed post-conviction motions raising Miller claims.

Of the four cases on direct appeal when Miller was decided, two had their convictions reversed and two had the JLWOP sentence vacated. In one of the two reversals the defendant was acquitted on retrial and the other plead to a reduced charge of manslaughter. One person whose sentence was vacated, Lester Parker, has been resentenced to life with parole. The second is pending resentencing

The JLWOP sentence has been vacated in 35 of the 84 post-conviction cases. Fifteen people have been resentenced to life with parole. Three resentenced to LWOP. Seventeen are before the trial court pending resentencing. The remaining 49 post-conviction cases are pending before a circuit court on Motion to Vacate.

There were 16 potential JLWOP cases pending pre-trial when Miller was decided. Two were sentenced to automatic JLWOP before Parker was decided and are counted in the 84 post-conviction cases noted above. One has since been sentenced to JLWOP for murder. The others have been convicted of lesser charges or had charges dismissed.

Fifty new JLWOP eligible cases have been filed since July 1, 2012. Twenty-nine of these cases remain open. Of the 21 closed cases one person was sentenced to JLWOP bringing the total LWOP sentences post-Parker to five.

It is anticipated that there will be 15 new potential JLWOP cases indicted each year with most needing appointed counsel. In addition it is anticipated that the local public defenders will be expected to handle the bulk of the post-conviction cases still pending in post-conviction when resentencing is ordered. The total number of potential cases today is 98.

The Bottom Line

Even the most conservative estimate of the cost to counties to provide constitutionally adequate counsel, investigators and experts in the pending cases would be in the millions. Assuming *pro bono* or retained counsel handle 25%, the counties will have to provide the cost in about 75 cases, some almost 20 years old. Based on the average costs of death penalty cases (approximately \$75,000/case) it would cost the counties over \$5,500,000 to handle the backlog and an additional \$850,000/year to handle future cases. This cost does not include the cost of empaneling juries.²

¹ Two people have two sentences imposed in separate cases so the total number of cases is 88.

² See Vicksburg Post Editorial, April 1, 2015, regarding retrial of Vega case.